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IN THE

Supreme Court of the United States

October Term 1970
No. 507

JUDITH JAVA and CARROLL H. HUDSON, *et al.*,
Appellees,

vs.

CALIFORNIA DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT; GILBERT SHEFFIELD, Individually and as Director of the California Department of Human Resources Development,
Appellants.

On Appeal from the United States District Court for the Northern District of California.

MOTION OF SOUTHERN CALIFORNIA EDISON COMPANY, ET AL., TO INTERVENE AS DEFENDANTS-APPELLANTS.

I.

Motion and Preliminary Statement.

Applicants for Intervention, Southern California Edison Company, California Metal Enameling Company, Transit Mixed Concrete Company, American Cement Corporation, West Coast Chain Manufacturing Company, and Occidental Life Insurance Company (hereinafter "Applicants") move for leave to intervene as

defendants in this action pursuant to Rule 24 of the Federal Rules of Civil Procedure and Rule 35 of the Supreme Court Rules. The Applicants move to intervene in order to assert the defenses set forth in their proposed amendment which accompanies this motion,[1] and in order that the Applicants may participate as formal parties in the appeal and subsequent proceedings in this cause. The present parties have indicated that the Applicants' request for consent to file an *amicus curiae* brief on the merits will be granted. However, the Applicants maintain that their interest in this cause is of such significance that the status of *amici curiae* would be inadequate to protect their interest; an *amicus curiae* brief will be filed only as an alternative to being filed on behalf of the Applicants as formal parties.

The following brief submitted in support of the motion to intervene will more fully develop and demonstrate the Applicants' substantial interest in this litigation. In summary, that argument will show that the Applicants are employers within the State of California, and as such, are subject to the taxing provisions of the California Unemployment Insurance Code. The unemployment insurance taxes paid by employers constitute almost the sole source of income collected in the Unemployment Fund, from which unemployment benefits are disbursed to qualified claimants. Employers have a substantial interest in seeing that excessive amounts are not disbursed from the Fund, for as bene-

[1]See Exhibit A.

fits increase, the employers' unemployment taxes also increase. Section 1328 of the Code provides employers with a procedure for testing the propriety of disbursements by granting an employer the right to challenge the Department's initial determination to pay benefits to a former employee whom the employer believes is ineligible. Section 1335 provides in part that if such an appeal is filed by the employer, the payment of benefits will be suspended. The District Court has enjoined the enforcement of that Section holding that the lack of a pre-termination hearing renders the Section constitutionally defective.

A decision upholding the District Court's invalidation of Section 1335 could have a substantial financial effect upon employers within the state. Affidavits submitted by representatives of the Applicants, attached hereto as Exhibits B through G, demonstrate the significant increase in taxes which the employers could be required to pay. In summary, the affidavits show that should disbursements from the Fund significantly increase, a result which necessarily follows from the District Court's decision, employers could be required to pay taxes based upon a higher taxable wage base and under a higher tax schedule. If both of these bases for computing the Applicants' tax rates had been operative in 1969, the Applicants' unemployment taxes would have shown an increase over taxes actually paid in 1969 in these amounts: Southern California Edison Co.—93.3%; California Metal Enameling Co.—31.3%; Transit Mixed Concrete Co.—53.2%; Ameri-

can Cement Corp.—62.1%; West Coast Chain Manufacturing Co.—66.8%; Occidental Life Insurance Co. —35.2%.

This direct financial impact, and the nature and structure of the unemployment insurance program, serve to illustrate that employers within the state, rather than the state itself, are the real parties in interest in this litigation. In essence, the state merely serves as an adminstrator of private funds, disbursing sums from an account completely segregated from ordinary tax revenue. Employers are as entitled as the appellees to procedural due process under the Fourteenth Amendment with regard to the proper administration of the Fund. A ruling favorable to the appellees would substantially affect the employers' rights, but would infringe upon the state's interests only to the extent that new procedures might render the administration of the Fund more cumbersome.

The Applicants, therefore, have a substantial interest in the instant litigation, and are so situated that the disposition of the action may as a practical matter impair or impede their ability to protect that interest. The Applicants have a defense to the appellees' claims presenting both questions of law and of fact which are common to the main action. Moreover, the interests of the Applicants and the appellants diverge to the extent that the Applicants' interest may not be adequately represented by existing parties. The Applicants will show that intervention at this stage of the proceedings is proper, that the motion is timely, and that their interest in this cause is such that they should be granted leave to intervene of right pursuant to Fed. R. Civ. P. 24(a), or in the alternative, granted permission to intervene pursuant to Fed. R. Civ. P. 24(b).

II.

Applicants Should Be Granted Leave to Intervene of Right.

Rule 24(a) of the Federal Rules of Civil Procedure states:

> "(a) INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action: (a) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

The applicable subsection in this instance is 24(a)(2). The Applicants meet all the prerequisites to intervention established by that subsection.

A. The Motion Is Timely and Is Properly Addressed to the Appellate Court.

The Applicants must address their motion to intervene to this Court becuase it is the only court to which application for intervention may now be made. Since an appeal has been taken, the District Court is without jurisdiction to entertain the motion. *United States v. Radice* (2d Cir. 1930), 40 F. 2d 445; *American Brake Shoe & Foundry Co. v. Interborough Rapid Transit Co.* (S.D.N.Y. 1942), 3 F.R.D. 162; see generally 3B Moore's Federal Practice ¶24.13[1] at 24-528. Although a motion to intervene at the appellate level is uncommon, this Court has recognized the propriety of such a motion under certain circumstances. In *Auto*

Workers v. Scofield (1965), 382 U.S. 205, the Court held that a successful charging party in an NLRB proceeding has the right to intervene in appellate proceedings. In reaching that conclusion, the Court noted that although the National Labor Relations Act did not provide explicitly for intervention at the appellate court level, the Federal Rules of Civil Procedure provided a helpful analogy supporting intervention. The Court noted that:

> "The Federal Rules of Civil Procedure, of course, apply only in the federal district courts. Still, the policies underlying intervention may be applicable in appellate courts. * * *"
>
> *Auto Workers v. Scofield,* 382 U.S. 205, 217 (Fn. 10).

Other courts have recognized the propriety of a motion to intervene on appeal when, under the circumstances of the case, the Applicants' interest could not be otherwise adequately protected. In *Smuck v. Hobson* (D.C. Cir. 1969), 408 F. 2d 175, the Court held that parents of school children were properly granted leave to intervene after judgment in order to register their dissent from the district court's decision. The Court noted that:

> "The relevance of substantial and unsettled questions of law has been recognized in allowing intervention to perfect an appeal. And this Court has noted repeatedly, 'obviously tailored to fit ordinary civil litigation, [the provisions of Rule 24] require other than literal application in atypical cases. * * *"
>
> *Smuck v. Hobson,* 408 F. 2d 175, 180.
>
> *Cf., Wolpe v. Poretsky* (D.C. Cir. 1944), 144 F. 2d 505, *cert. denied* (1944), 323 U.S. 777.

Application to this Court is timely under the circumstances of this case. First, counsel for the Applicants was not authorized to proceed with a motion to intervene in the District Court until May 5, 1970. Upon receiving that authorization, research was undertaken in order to discern the financial impact which a decision favorable to the plaintiffs would have on each individual employer. As the attached affidavit of counsel for the Applicants more fully explains,[2] this research was still underway when the District Court's order granting the preliminary injunction was filed on May 14, 1970, and when notice of appeal was filed thereafter. Counsel was therefore unable to prepare and file the necessary motion papers in the District Court; since that Court cannot now entertain the motion, the Applicants' only recourse is to seek to intervene before this Court.

The Applicants' motion to this Court is proper and timely, secondly, because the District Court had an opportunity to pass upon the propriety of joining the employers but refused to do so. The appellants filed a motion to dismiss in the Court below for failure of the appellees to join indispensable parties pursuant to Fed. R. Civ. P. 19(a). In an analogous case, the same District Court granted a motion to dismiss for failure to join employers, with leave to amend. *Romero v. Wirtz* (N.D. Cal. 1969), Civil No. 50213.[3] But in the instant case, the Court entered its order granting the preliminary injunction without ruling upon the appellants' motion to dismiss. Since the issue was before the

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[2]The affidavit of Willard Z. Carr, Jr. is attached hereto as Exhibit H.

[3]A copy of the order granting the defendants' motion to dismiss in *Romero* is attached hereto as Exhibit I.

Court prior to the entry of the decree, the instant motion is timely; no purpose could now be served by moving for the Applicants' joinder as defendants in the District Court.

B. Applicants Have an Interest Relating to the Transaction Which Is the Subject of the Action.

In the Preliminary Statement, *supra*, the possible financial impact upon the Applicants, if the District Court's decision is upheld, was briefly illustrated. This direct financial effect would be likely to occur, due to the statutory structure of the unemployment insurance program.

Three elements in the financing structure for unemployment insurance affect the amount of taxes California employers pay to support the system regardless of their individual reserve account accumulations and their experience with unemployment. One of these elements is the taxable wage base (Unemployment Insurance Code Section 930). Whenever total revenues to the Unemployment Fund equal or exceed disbursements, employers pay taxes at the assigned rates on the first $3,800 of each employee's annual earnings. When revenues fall short of disbursements, however, employers pay taxes on the first $4,100 of each employee's wages. Thus, at the average 1969 tax rate of 2.51%, a company would pay a per employee tax ranging from $95.38 to $102.91, depending on the relationship of fund income to outgo.

The second is the balancing account tax (Section 976.5 of the Code). Charges to the balancing account include benefit payments not charged to individual employer's accounts, extended duration payments, and benefits charged against deficit accounts. Credits to

the balancing account come mainly from uniform taxes levied on all employers and interest earned by the unemployment funds. The tax rate depends upon the relationship between charges to the account and its credits and ranges from a high of 1.0% to a low of 0.2%. An employer who was not responsible for any charges against the balancing account could be assessed for per employee charges of as much as $41 or as little as $7.60, depending upon the relationship of account charges to credits.

The third element concerns the two experience rating tax schedules (Sections 977 and 978 of the Code). Under these variable schedules, employers are taxed in relation to their experience with unemployment; however, the factor governing the operative schedule is the relationship of the Unemployment Fund to total taxable wages in the state. The high tax schedule is designed to produce more revenue than the low, so employers with excellent experience pay more taxes whenever the high tax schedule is in effect. For example, an employer with the optimum reserve account ratio would pay at the rate of 0.8% when the high schedule is in effect; under the low schedule, he would be assigned a zero rate.

Under this statutory structure, a decision upholding the District Court's invalidation of Section 1335 could subject each of the Applicants to a substantial increase in unemployment taxes. The interest of the Applicants differs from the interest of a member of the general public, for the Applicants are part of a limited taxpaying group whose taxes are earmarked for a specific fund and whose taxes will increase by a measurable amount if particular contingencies provided for by statute occur. In contrast to the general public whose

main interest is the broad one of conserving public funds, the Applicants have the discernible and tangible financial interest of not having a higher tax schedule already provided by statute applied to them. The Applicants' financial interest in the Unemployment Fund is not unlike the interest of the State of California in *Cascade Natural Gas Co. v. El Paso Natural Gas Co.* (1967), 386 U.S. 129, 135, described by the Court as being "at the heart" of the controversy; and, thus, qualifying the State as an intervenor. In *Cascade*, the Court held that the protection of the State's interest in a competitive system, Cascade's interest as a competitor, and Southern California Edison's interest as a customer, were all sufficient "interests" under Rule 24 to justify intervention. The Applicants' interest in the instant litigation is similarly significant; the Applicants should have an opportunity to be heard and protect that interest as formal parties.

C. The Applicants Are so Situated That the Disposition of the Action May as a Practical Matter Impair or Impede Their Ability to Protect That Interest.

Prior to the 1966 amendment to Rule 24(a), it was required that an applicant's interest might be "bound" in the *res judicata* sense before it could obtain intervention as of right. See 3B *Moore's Federal Practice* ¶24.09-1[3] (1960). The 1966 amendment eliminated this condition and substituted the concept of impairing or impeding an applicant's ability to protect its interest as "a practical matter." In *Cascade Natural Gas Co. v. El Paso Natural Gas Co., supra,* the Court noted that the

amendments were intended to inject elasticity into the former practice, as evidenced by the Advisory Committee's quotation of Professor Moore's observation:

> ". . . Rule 24(a)(3) was unduly restricted. * * * Intervention of right is here seen to be a kind of counterpart to Rule 19(a)(2)(i) on joinder of persons needed for a just adjudication: where, upon motion of a party in an action, an absentee should be joined so that he may protect his interest which as a practical matter may be substantially impaired by the disposition of the action, he ought to have a right to intervene in the action on his own motion. * * * "
>
> *Cascade Nat. Gas v. El Paso Nat. Gas*, 386 U.S. 134 (Fn. 3).

This correlation between Rule 19(a)(2)(i) and Rule 24(a)(2), as well as Rule 23 governing class actions, was extensively analyzed in *Atlantis Development Corp. v. United States* (5th Cir. 1967), 379 F. 2d 818. In *Atlantis* the Court noted that:

> "In these three Rules the Advisory Committee, unsatisfied with the former Rules which too frequently defined application in terms of rigid legal concepts such as joint, common ownership, res judicata, or the like, as well as court efforts in applying them, deliberately set out on a more pragmatic course. For the purposes of our problem, this course is reflected in the almost, if not quite, uniform language concerning a party who claims an interest relating to the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest. . . .

> "Although this is question-begging and is therefore not a real test, this approach shows that the question of whether an intervention as a matter of right exists often turns on the unstated question of whether joinder of the intervenor was called for under new Rule 19. * * *"
>
> *Atlantis Development Corporation v. United States,* 379 F. 2d 818, 824-825.

The Court held that intervention of right was improperly denied by the trial court. In so holding, the Court observed that:

> "Foremost, of course, is the plain proposition that the judgment itself as between Government and defendants cannot have any direct, immediate effect upon the rights of Atlantis, not a party to it.
>
> "But in a very real and practical sense is not the trial of this lawsuit the trial of Atlantis' suit as well? * * *"
>
> *Atlantis Development Corporation v. United States,* 379 F. 2d 818, 826.

The same question could be posed with regard to the practical effect that the disposition of the instant case would have upon the Applicants. Although a decision favorable to the appellees would not hold the Applicants directly liable under the judgment, a similar result in the form of higher unemployment taxes would necessarily follow. The Applicants would be effectively foreclosed from challenging increased disbursements from the Fund in a subsequent lawsuit. In this sense, then, the Applicants should have been joined as defendants in the Court below pursuant to Rule 19(a) (2)(i). If joinder was required, intervention of right under Rule 24(a)(2) would also be proper.

D. The Applicants' Interest May Not Be Adequately Represented by the Existing Parties.

In addition to the requirement that an applicant for intervention show that its interest might be bound by a judgment in the action, Rule 24(a) prior to the 1966 amendment also required that the applicant show that the respresentation of its interests by existing parties "is or may be inadequate." ***Kozak v. Wells,*** (8th Cir. 1960), 278 F. 2d 104; ***Farmland Irr. Co. v. Dopplmaier,*** (9th Cir. 1955), 220 F. 2d 247; ***Hamilton v. Civillico*** (E.D. Pa. 1963), 34 F.R.D. 1. The 1966 revision, providing for intervention "unless the applicant's interest is adequately represented by existing parties," has been interpreted as being designed to place a burden of showing adequacy of representation on one opposing intervention of right. *Nuesse v. Camp,* (D.C.Cir. 1967), 385 F. 2d 694.

> "The Commissioner's right to intervene as a party depends also on whether his interest is adequately represented by existing parties * * *. The prior text of Rule 24 spoke in terms of whether representation by existing parties 'is or may be inadequate.' The present rule provides for intervention 'unless the applicant's interest is adequately represented by existing parties.'
>
> "While the change in wording does not relate to any change in standard as such, it underscores both the burden of those opposing intervention to show the adequacy of the existing representation and the need for a liberal application in favor of permitting intervention."
>
> *Nuesse v. Camp,* 385 F. 2d 694, 702.

Accord:

Smuck v. Hobson (D.C. Cir. 1969), 408 F. 2d 125.

Although other courts and writers have concluded that the amendment was not intended to place a burden of proving the adequacy of representation on the opposing party, *see, e.g., Edmonson v. Nebraska* (8th Cir. 1967), 383 F. 2d 123; 2 *Barron & Holtzoff*, Federal Practice and Procedure § 597 (Supp. 1969); 3B *Moore's Federal Practice* ¶24.09-1[4] (1969), it is undisputed that the test is still whether the interest of the intervenors "may be" inadequately represented.

It is clear, of course, that "inadequate representation" does not mean there may be a lack of legal ability on the part of the Attorney General's office, nor that the state is unmindful of the employers' position. The possibility of inadequate representation lies in the divergence of interests between the state and the Applicants for intervention.

A divergence of interests has been held sufficient to support a finding that representation may be inadequate. In *Nuesse v. Camp* (D.C. Cir. 1967), 385 F. 2d 694, the Court stated:

> "However, interests need not be wholly adverse before there is a basis for concluding that existing representation of a 'different' interest may be inadequate."
>
> *Nuesse v. Camp*, 385 F. 2d 694, 703.

The Court went on to analyze the interests of each party and noted that the interest of the state official seeking intervention was of a different order than that of the party bringing the suit, a state bank which

came under the jurisdiction of the intervening official. The Court dismissed the connection that the similarity of the present legal contentions of the parties meant adequacy of representation and held that since the interests of the plaintiff and the application for intervention "may not coincide", the requirement that there may be inadequate representation had been met.

In *Ford Motor Co. v. Bizanz Bros. Inc.* (8th Cir. 1957), 249 F. 2d 22, a sufficient divergence of interests was found to justify intervention of right. In that case, Ford sought to intervene in a class action brought by property owners to enjoin the operation of a railroad in a residential section of a city. The suit would have deprived Ford of essential railroad services. Although Ford adopted the denials and allegations of the railroad's answer, the Court believed that the two parties had different interests and concluded that since it could not be said with certainty that Ford's interest would be adequately represented, intervention was necessary. Similarly, in the instant case it cannot be said with certainty that the Applicants' interests will be adequtely represented.

There is a paucity of authority with regard to the extent to which the interests of an applicant and an existing party must diverge before inadequacy of representation may be found. It is clear in this case, however, that such a divergence exists. This is because in this type of action, the State is merely put to the task of defending the propriety of an existing statutory provision. Since the legislature has decreed that benefits shall not be due until the employer's appeal is heard, the office of the Attorney General must defend that mandate. From a practical standpoint, however, an adverse ruling would affect only one segment of the State

population—employers. Such a ruling would deny employers an opportunity to be heard before benefits are paid; employers would therefore be subject to significantly increased unemployment contributions without a prior fair adjudication of the claimant's eligibility. The Applicants' interest is preserving the present guarantee that they will be accorded due process of law before benefits are held to be due is therefore completely divergent to the State's administrative concern. Since those interests are so divergent, the Applicants' interests may not be adequately represented; intervention of right should therefore be granted.

III.

Assuming That Applicants Are Not Entitled to Intervention as of Right the Court Should Exercise Its Discretion to Grant Permissive Intervention.

Rule 24(b) of the Federal Rules of Civil Procedure states:

> "(b) PERMISSIVE INTERVENTION. Upon timely application anyone may be permitted to intervene in an action: * * * (2) when an applicant's claim or defense and the main action have a question of law or fact in common. * * * In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice and adjudication of the rights of the original parties."

Application for intervention in this case has been timely and intervention should not delay the adjudication of the rights of the original parties, as was more fully set forth in Section II, *supra*. No prejudice would result from the granting of intervention.

Under Rule 24(b) the basic test is whether or not there are common questions of law or fact. There is no requirement that an applicant also possess a protectible interest or be inadequately represented. In this instance, the questions of law and fact posed by the applicants are identical to the questions already framed in the original pleadings. Thus this is an appropriate case for the Court to grant intervention.

IV.

Conclusion.

For the reasons stated herein, Applicants' motion for leave to intervene should be granted either on the basis that they are entitled to intervention as of right under Rule 24(a) or as appropriate parties for intervention under the Court's discretionary powers pursuant to Rule 24(b).

Dated: October 30, 1970.

Respectfully submitted,

WILLARD Z. CARR, JR.,
Attorney for Applicants for Intervention Southern California Edison Company, et al.

Proof of Service.

I, WILLARD Z. CARR, JR., one of the attorneys for Southern California Edison Company, *et al.*, applicants for intervention herein, and a member of the bar of the Supreme Court of the United States, hereby certify that, on the 30th day of October, 1970, I served copies of the foregoing motion to intervene on the several parties thereto, as follows:

1. On the Appellee, Judith Java, *et al.*, by mailing a copy, in a duly addressed envelope, with air mail postage prepaid, to James Klein, Esq., one of the attorneys for the Appellees, at the offices of the Contra Costa Legal Services Foundation, 337 Tenth Street, Richmond, California 94801.

2. On the Appellants, California Department of Human Resources Development, *et al.*, by mailing a copy, in a duly addressed envelope, with air mail postage prepaid, to Thomas C. Lynch, Esq., counsel for the Appellees, at his offices, 6000 State Building, San Francisco, California 94102.

WILLARD Z. CARR, JR.,
By WILLARD Z. CARR, JR.,
Attorney for Applicants for Intervention Southern California Edison Company, et al.

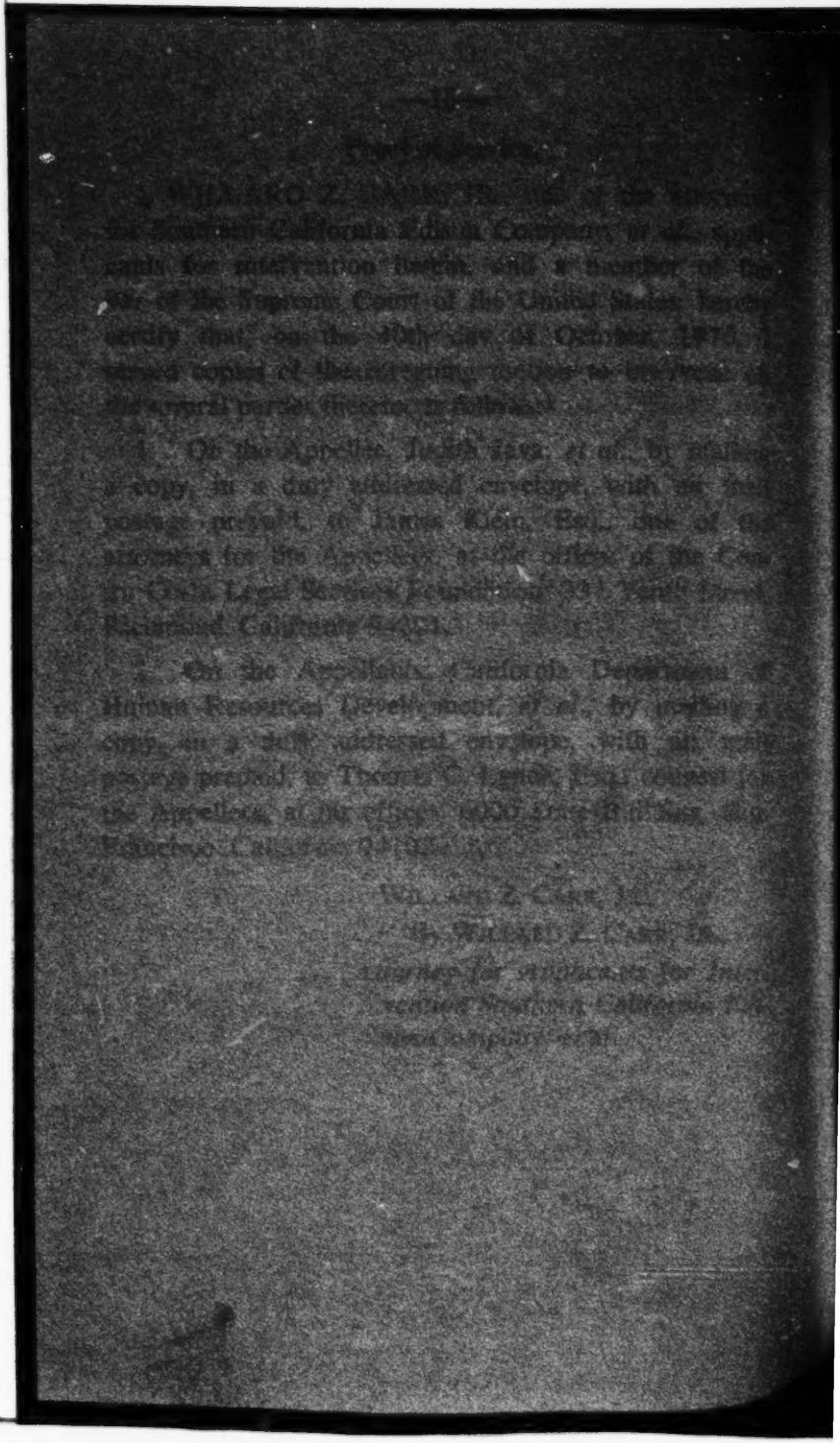

EXHIBIT A.

Answer of Intervening Defendants.

United States District Court, Northern District of California.

Judith Java and Carroll H. Hudson, individually, on behalf of themselves, and all others similarly situated, Plaintiffs, v. California Department of Human Resources Development; Gilbert Sheffield, individually and as Director of the California Department of Human Resources Development, Defendants, and Southern California Edison Company, et al., Intervening Defendants. Civil Action No. C-69 350 ACW.

Intervening defendants answer the complaint as follows:

1. Answering paragraph I, intervening defendants deny that suit is "authorized" by any statute cited therein and with this exception, admit the allegations of said paragraph.

2. Answering paragraph II, intervening defendants admit the allegations of said paragraph.

3. Answering paragraph III, intervening defendants deny that 42 U.S.C. 1983 "authorizes" this suit, and, with this exception admit the allegations of said paragraph.

4. Answering paragraph IV, intervening defendants lack information and belief as to the allegations of said paragraph, and based on such lack of information and belief, deny each and every allegation thereof.

5. Answering paragraph V, intervening defendants have no information and belief sufficient to enable them to answer the allegations of said paragraph, and based on such lack of information and belief, deny each and every allegation thereof.

6. Answering paragraph VI, intervening defendants admit the allegations of said paragraph.

7. Answering paragraph VII, intervening defendants admit the allegations of said paragraph.

8. Answering paragraph VIII, intervening defendants admit the allegations of said paragraph.

9. Answering paragraph IX, intervening defendants admit the allegations of said paragraph.

10. Answering paragraph X, intervening defendants admit the allegations of said paragraph and are informed and believe, and based upon such information and belief so allege, that defendant Director Gilbert L. Sheffield and each of his predecessor directors in office have formulated and filed with the Secretary of Labor a state plan for unemployment insurance pursuant to the provisions of the Unemployment Insurance Code and the former Unemployment Insurance Act; such plan has been certified by the Secretary of Labor to conform wih the provisions of 42 U.S.C. 501, et seq., including the provisions of Section 1335 of the Unemployment Insurance Code and its predecessor section; and that federal funds for the administration of the unemployment insurance program in the State of California have been received by the Department of Human Resources Development and its predecessor the Department of Employment, were so received during all periods involved in the proceeding before the Court, and are being so received predicated upon the approval and certification of the California state plan for unemployment insurance by the Secretary of Labor.

11. Answering paragraph XI, intervening defendants admit the allegations of said paragraph.

12. Answering paragraph XII, intervening defendants admit that on September 4, 1969, plaintiff, Ju-

dith Java, was initially determined to be eligible for unemployment insurance benefits by the Department of Human Resources Development, that a former employer filed a notice of appeal from this determination by the Department, that on September 10, 1969, the Department informed her that she would not receive unemployment benefits until a hearing had been held on the appeal, and having no information or belief sufficient to enable them to answer the remaining allegations of said paragraph, deny each and every other allegation thereof. Intervening defendants are informed and believe, and based on such information and belief so allege, that a hearing was held on this appeal on December 1, 1969 after a three week delay due to plaintiff's request for a continuance, and that on December 3, 1969 the referee ruled that plaintiff Judith Java disqualified from receiving benefits.

13. Answering paragraph XIII, intervening defendants admit that plaintiff Carroll H. Hudson was initially determined to be eligible for unemployment insurance benefits in August of 1969, that payment of benefits commenced, that her former employer appealed this determination, that on September 8, 1969 the Department informed her that no unemployment insurance benefits would be paid until a decision on the appeal has been reached, and having no information and belief sufficient to enable them to answer the remaining allegations of said paragraph, deny each and every other allegation therein. Intervening defendants are informed and believe, and based upon such information and belief so allege, that on November 12, 1969 a hearing was held on this appeal and the referee affirmed the determination of the Department that plaintiff Carroll Hudson was entitled to benefits.

14. Answering paragraph XIV, intervening defendants admit that under section 1335 of the Unemployment Insurance Code an unemployed worker initially determined to be eligible by the Department receives no benefits once an appeal is filed by his employer until after a decision is reached on the appeal, specifically deny that an appeal often takes several months to resolve, and generally and specifically deny each and every other allegation of said paragraph.

15. Answering paragraph XV, intervening defendants lack information and belief sufficient to enable them to answer the allegations of said paragraph, and based on such lack of information and belief deny generally and specifically each and every allegation thereof.

16. Answering paragraph XVI, intervening defendants lack information and belief sufficient to enable them to answer the allegations of said paragraph, and based on such lack of information and belief, deny generally and specifically each and every allegation thereof.

17. Answering paragraph XVII, intervening defendants allege that the Department and its employees have not acted arbitrarily toward plaintiffs and their class, further allege that the Department has followed all applicable laws with respect to plaintiffs and has accorded plaintiffs and their class all rights to which they are entitled under federal and state law, and deny generally and specifically each and every allegation of said paragraph.

18. Answering paragraph XVIII, intervening defendants deny generally and specifically each and every allegation of said paragraph.

FIRST DEFENSE

19. The complaint fails to state a claim against the defendant upon which relief can be granted.

WHEREFORE, intervening defendants pray,

1. That plaintiffs be granted no relief in this action;

2. That the court grant such other relief as may seem proper.

DATED: October 27, 1970.

WILLARD Z. CARR, JR.
By /s/ Willard Z. Carr, Jr.
Willard Z. Carr, Jr.
of GIBSON, DUNN & CRUTCHER
Attorneys for Intervening
Defendants.

EXHIBIT B.

State of California, County of Los Angeles—ss.

C. H. FAULKNER, being first duly sworn, deposes and says:

1. I am the Manager of Industrial Relations of Southern California Edison Company (hereinafter the "Company"), and I held that position during all the times mentioned herein. I make this affidavit on the basis of my best knowledge and belief, and in support of the application of the Company for leave to intervene as a party defendant.

2. The Company is a California corporation engaged as a public utility in the supply of electricity in the central and southern portions of the State of California. Based on annual revenues, the Company is the fifth largest electric utility in the nation. As an employer within the State of California, the Company pays unemployment insurance contributions as required by the California Unemployment Insurance Code (hereinafter the "Code"). Pursuant to Section 1335 of the Code, the Company may appeal an initial determination of eligibility for unemployment insurance benefits, under which payments of benefits to a claimant are suspended pending the outcome of the appeal.

3. The Company maintained an average work force of 11,500 employees during 1969; the number of Company employees as of December 31, 1969, totalled 11,902. Taxable wages earned by Company employees during the 1969 calendar year totaled $46,544,017. Based on those wages, the Company paid $465,440 in taxes into the State of California Unemployment Fund (hereinafter the "Fund"). That amount reflects the Company's tax rate of 1.0% of employees'

wages in 1969, including the 1.0% balancing account tax rate.

4. In calendar year 1969, Company employees filed 371 claims for unemployment insurance benefits. In 187 instances the Company protested these claims to the Department of Human Resources Development, and on 174 occasions the determination by the Department was favorable to the contentions of the Company. On one occasion during 1969 the Company appealed from a determination of the Department to a Referee of the Unemployment Appeals Board. Although the appeal was decided unfavorably to the Company, I believe these figures support the Company's position that employer protests and appeals are taken in good faith, and are not designed to withhold benefits from deserving employees.

5. The possible impact upon the Company, if the decision of the District Court invalidating Section 1335 of the Code is upheld, could be substantial:

(a) If the disbursements from the Fund exceeded the total revenues in a twelve-month period and the Company is accordingly required to pay taxes upon the first $4,100 of wages rather than the first $3,800 of wages under Section 930 of the Code, the amount of additional taxes payable on wages earned in a year like 1969 would be $34,433, or 7.4%;

(b) Increased disbursements from the Fund could also place the Company under the higher tax schedule in Section 977, rather than the low schedule in 978. If the Company were required to pay under the high tax schedule, which would occur if the year-end balance in the Fund amounts to less than 5% of the wages in employment, in a year like 1969 the Company would

be required to pay at the increased rate of 1.8%, including the 1.0% balancing account tax rate. Based on 1969 payrolls, payments at this rate would have increased the Company's taxes by $372,352 or 80.0%. If the high taxable wage base and the high tax schedule had been operative in 1969, total unemployment taxes, including the 1.0% balancing account tax, would have totaled $899,781, an increase of 93.3% over the $465,440 in taxes paid on calendar 1969 wages.

6. The Company believes the foregoing figures demonstrate that it has a significant economic interest in the pending litigation. The disposition of the action, in the absence of the Company's joinder as a party defendant, would leave the Company's interest unprotected; that interest differs from that of the State of California and its agents to the extent that the Company's interest may not be adequately represented by those parties.

C. H. Faulkner

Subscribed and sworn to before me, this 7th day of August, 1970.

Dorothy V. Roth,

Notary Public in and for said State and County.

EXHIBIT C.

State of California, County of Los Angeles—ss:

STANDISH K. PENTON, being first duly sworn, deposes and says:

1. I am the Secretary-Treasurer of California Metal Enameling Company (hereinafter the "Company"), and I was the Secretary-Treasurer thereof during the times mentioned herein. I make this affidavit on the basis of my best knowledge and belief, and in support of the application of the Company for leave to intervene as a party defendant.

2. The Company, a California corporation, is, and has been since 1911, a manufacturer of porcelain enameled metal products. As an employer within the State of California, the Company pays unemployment insurance contributions as required by the California Unemployment Insurance Code (hereinafter the "Code"). Pursuant to Section 1335 of the Code, the Company may appeal an initial determination of eligibility for unemployment insurance benefits, under which payments of benefits to a claimant are suspended pending the outcome of the appeal.

3. The Company employed an average of 202 employees within the State of California in the calendar year 1969, and based on taxable wages totaling $853,501 during that period, paid $18,777 into the State of California Unemployment Fund (hereinafter the "Fund"). That amount reflects the Company's tax rate of 2.2% of employees' wages in 1969, including the 1.0% balancing account tax rate.

4. In calendar year 1969, 37 claims for unemployment compensation were filed by Company em-

ployees. The Company protested 17 of these claims to the Department of Human Resources Development. Although the Department upheld the Company's position in only 2 of the 17 instances, no appeals to a Referee of the Unemployment Insurance Appeals Board were filed by the Company. I believe these figures support the Company's position that employer protests and appeals, when necessary, are taken in good faith, and are not designed to withhold benefits from deserving employees.

5. The possible impact upon the Company if the decision of the District Court invalidating Section 1335 of the Code is upheld, could be substantial:

(a) If the disbursements from the Fund exceed the total revenues in a twelve-month period, and the Company is accordingly required to pay taxes based upon the first $4,100 of wages rather than the first $3,800 of wages under Section 930 of the Code, the amount of additional taxes payable on wages earned in a year like 1969 would be $1,331, or 7%;

(b) Increased disbursements from the Fund could also place the Company under the higher tax schedule in Section 977, rather than the low schedule in Section 978. If the Company were required to pay under the high tax schedule, which would occur if the year-end balance in the Fund amounts to less than 5% of the wages in employment, in a year like 1969 the Company would be required to pay at the increased rate of 2.7%, including the 1.0% balancing account tax rate. Based on 1969 payrolls, payments at this rate would have increased the Company's taxes by $4,268, or 22.7%. If the high taxable wage base and the high tax schedule had been operative in 1969,

total unemployment taxes, including the 1.0% balancing account tax, would have totaled $24,658, an increase of $5,881, or 31.3%.

6. The Company believes the foregoing figures demonstrate that it has a significant economic interest in the pending litigation. The deposition of the action, in the absence of the Company's joinder as a party defendant, would leave the Company's interest unprotected; that interest differs from that of the State of California and its agents to the extent that the Company's interest may not be adequately represented by those parties.

/s/ Standish K. Penton
Standish K. Penton

Subscribed and sworn to before me, this 11 day of August, 1970.

/s/ Lars J. Madsen, Notary Public in and for said State and County.

[Seal]

EXHIBIT D.

State of California, County of Los Angeles—ss:

RICHARD C. LAWTON, being first duly sworn, deposes and says:

1. I am the President of Transit Mixed Concrete Company (hereinafter the "Company"), and I was the President thereof during the times mentioned herein. I make this affidavit on the basis of my best knowledge and belief, and in support of the application of the Company for leave to intervene as a party defendant.

2. The Company, a California corporation with its principal place of business in Los Angeles, California, is engaged in the business of preparing and delivering ready-mixed concrete to job sites in Los Angeles County. As an employer within the State of California, the Company pays unemployment insurance contributions as required by the California Unemployment Insurance Code (hereinafter the "Code"). Pursuant to Section 1335 of the Code, the Company may appeal an initial determination of eligibility for unemployment insurance benefits, under which payments of benefits to a claimant are suspended pending the outcome of the appeal.

3. The Company employed 225 employees within the State of California in the calendar year ending December 31, 1969, and based on taxable wages totaling $913,474 during that period, paid $12,619 into the State of California Unemployment Fund (hereinafter the "Fund"). That amount reflects the Company's tax rate of 1.4% of employees' wages in 1969, including the 1.0% balancing account tax rate. The current

1970 tax rate is 0.8%, including a balancing account rate of 0.8%.

4. In calendar year 1969, 80 claims for unemployment compensation were filed by Company employees. The Company protested 8 of these claims to the Department of Human Resources Development, which upheld the Company's position in 6 of the 8 instances. The two adverse rulings were subsequently appealed to a Referee of the Unemployment Insurance Appeals Board, resulting in a reversal of the Department's determination, and a decision favorable to the Company. Thus, each protest against the payment of unemployment insurance benefits filed by the Company in 1969 was ultimately found to be meritorious. I believe these figures support the Company's position that employer protests and appeals are taken in good faith, and are not designed to withhold benefits from deserving employees.

5. The possible impact upon the Company, if the decision of the District Court invalidating Section 1335 of the Code is upheld, could be substantial:

(a) If the disbursements from the Fund exceed the total revenues in a twelve-month period, and the Company is accordingly required to pay taxes based upon the first $4,100 of wages rather than the first $3,800 of wages under Section 930 of the Code, the amount of additional taxes payable on wages earned in a year like 1969 would be $923, or 7.0%;

(b) Increased disbursements from the Fund could also place the Company under the higher tax schedule in Section 977, rather than the low schedule in Section 978. If the Company were required to pay under the high tax schedule, which would occur if the year-end

balance in the Fund amounts to less than 5% of the wages in employment, in a year like 1969 the Company would be required to pay at the increased rate of 2.0%, including the 1.0% balancing account tax rate. Based on 1969 payrolls, payments at this rate would have increased the Company's taxes by $5,481 or 42.8%. If the high taxable wage base and the high tax schedule had been operative in 1969, total unemployment taxes, including the 1.0% balancing account tax, would have totaled $19,558, an increase of $6,799, or 53.2%.

6. The Company believes the foregoing figures demonstrate that it has a significant economic interest in the pending litigation. The disposition of the action, in the absence of the Company's joinder as a party defendant, would leave the Company's interest unprotected; that interest differs from that of the State of California and its agents to the extent that the Company's interest may not be adequately represented by those parties.

/s/ Richard C. Lawton
Richard C. Lawton

Subscribed and sworn to before me this 6 day of August, 1970.

Raymond J. Schluter
Notary Public in and for said
State and County.

[Seal]

EXHIBIT E.

State of California, County of Los Angeles—ss.

WILLIAM L. PARKER, being first duly sworn, deposes and says:

1. I am the Director of Corporate Relations of American Cement Corporation (hereinafter the "Company"), and I held that position during the times mentioned herein. I make this affidavit on the basis of my best knowledge and belief, and in support of the application of the Company for leave to intervene as a party defendant.

2. The Company, a Delaware corporation, is engaged in the manufacture of cement, prefabricated steel components, and swimming pool equipment. As an employer within the State of California, the Company pays unemployment insurance contributions as required by the California Unemployment Insurance Code (hereinafter the "Code"). Pursuant to Section 1335 of the Code, the Company may appeal an initial determination of eligibility for unemployment insurance benefits, under which payments of benefits to a claimant are suspended pending the outcome of the appeal.

3. The Company employed an average of 845 employees within the State of California in the calendar year 1969, and based on taxable wages totaling $3,706,212 during that period, paid $51,887 into the State of California Unemployment Fund (hereinafter the "Fund"). That amount reflects the Company's tax rate of 1.4% of employees wages in 1969, including the 1.0% balancing account tax rate.

4. The possible impact upon the Company if the decision of the District Court invalidating Section 1335 of the Code is upheld, could be substantial:

(a) If the disbursements from the Fund exceed the total revenues in a twelve-month period, and the Company is accordingly required to pay taxes based upon the first $4,100 of wages rather than the first $3,800 of wages under Section 930 of the Code, the amount of additional taxes payable on wages earned in a year like 1969 would be $6,981, or 13.5%.

(b) Increased disbursements from the Fund could also place the Company under the higher tax schedule in Section 977, rather than the low schedule in Section 978. If the Company were required to pay under the high tax schedule, which would occur if the year-end balance in the Fund amounts to less than 5% of the wages in employment, in a year like 1969 the Company would be required to pay at the increased rate of 2.0%, including the 1.0% balancing account tax rate. Based on 1969 payrolls, payments at this rate would have increased the Company's taxes by $25,235, or 42.9%. If the high taxable wage base and the high tax schedule had been operative in 1969, total unemployment taxes, including the 1.0% balancing account tax, would have increased by $32,211, or 62.1%.

5. The Company believes the foregoing figures demonstrate that it has a significant economic interest in the pending litigation. The disposition of the action, in the absence of the Company's joinder as a party defend-

ant, would leave the Company's interest unprotected; that interest differs from that of the State of California and its agents to the extent that the Company's interest may not be adequately represented by those parties.

/s/ William L. Parker
William L. Parker

Subscribed and sworn to before me this 26th day of August, 1970.

Carol A. Williams
Notary Public in and for said
State and County.

[Seal]

EXHIBIT F.

State of California, County of Los Angeles—ss.

RALPH W. JONES, being first duly sworn, deposes and says:

1. I am the President of West Coast Chain Mfg. Co. (hereinafter the "Company"), and I was the President thereof during the times mentioned herein. I make this affidavit on the basis of my best knowledge and belief, and in support of the application of the Company for leave to intervene as a party defendant.

2. The Company, a California corporation with its principal place of business in Pasadena, California, is engaged in the business of manufacturing weldless chain, stainless steel key chains, and key chain reels. As an employer within the State of California, the Company pays unemployment insurance contributions as required by the California Unemployment Insurance Code (hereinafter the "Code"). Pursuant to Section 1335 of the Code, the Company may appeal an initial determination of eligibility for unemployment insurance benefits, under which payments of benefits to a claimant are suspended pending the outcome of the appeal.

3. The Company employed an average of 15 employees within the State of California in the calendar year ending December 31, 1969, and based on taxable wages totaling $61,158 during that period, paid $734 into the State of California Unemployment Fund (hereinafter the "Fund"). That amount reflects the Company's tax rate of 1.2% of employees' wages in 1969, including the 1.0% balancing account tax rate.

4. In calendar year 1969, one claim for unemployment compensation was filed by a Company employee.

The Company protested the claim to the Department of Human Resources Development, which upheld the Company's position. For the twelve-month period ending May 15, 1970, 3 claims were filed, 2 of which the Company protested. Both protests were upheld, obviating the necessity for any appeals to the Unemployment Insurance Appeals Board. I believe these figures support the Company's position that employer protests and appeals are taken in good faith, and are not designed to withhold benefits from deserving employees.

5. The possible impact upon the Company, if the decision of the District Court invalidating Section 1335 of the Code is upheld, could be substantial:

(a) If the disbursements from the Fund exceed the total revenues in a twelve-month period, and the Company is accordingly required to pay taxes based upon the first $4,100 of wages rather than the first $3,800 of wages under Section 930 of the Code, the amount of additional taxes payable on wages earned in a year like 1969 would be $40, or 5.5%;

(b) Increased disbursements from the Fund could also place the Company under the higher tax schedule in Section 977, rather than the low schedule in Section 978. If the Company were required to pay under the high tax schedule which would occur if the year-end balance in the Fund amounts to less than 5% of the wages in employment, in a year like 1969 the Company would be required to pay at the increased rate of 1.9%, including the 1.0% balancing account tax rate. Based on 1969 payrolls, payments at this rate would have increased the Company's taxes by $428 or 58.3%. If the high taxable wage base and the high

tax schedule had been operative in 1969, total unemployment taxes, including the 1.0% balancing account tax, would have increased by $490, or 66.8%.

6. The Company believes the foregoing figures demonstrate that it has a significant economic interest in the pending litigation. The disposition of the action, in the absence of the Company's joinder as a party defendant, would leave the Company's interest unprotected; that interest differs from that of the State of California and its agents to the extent that the Company's interest may not be adequately represented by those parties.

/s/ Ralph W. Jones
Ralph W. Jones

Subscribed and sworn to before me this 11th day of August, 1970.

Barbara W. Deadrick,
Notary Public in and for said County and State.

EXHIBIT G.

State of California, County of Los Angeles—ss.

ROBERT W. CONDON, being first duly sworn, deposes and says:

1. I am the Assistant Vice President of Occidental Life Insurance Company of California (hereinafter the "Company"), and I was the Assistant Vice President thereof during the times mentioned herein. I make this affidavit on the basis of my best knowledge and belief, and in support of the application of the Company for leave to intervene as a party defendant.

2. The Company, a California corporation with its principal place of business in Los Angeles, California, is engaged in the business of selling life, accident, and health insurance policies. As an employer within the State of California, the Company pays unemployment insurance contributions as required by the California Unemployment Insurance Code (hereinafter the "Code"). Pursuant to Section 1335 of the Code, the Company may appeal an initial determination of eligibility for unemployment insurance benefits, under which payments of benefits to a claimant are suspended pending the outcome of the appeal.

3. The Company employed an average of 3,398 employees within the State of California in the calendar year ending December 31, 1969, and based on taxable wages totaling $13,967,151 during that period, paid $223,474 into the State of California Unemployment Fund (hereinafter the "Fund"). That amount reflects the Company's tax rate of 1.6% of employees' wages in 1969, including the 1.0% balancing account tax rate.

4. In calendar year 1969, 389 claims for unemployment compensation were filed by Company employees. The Company protested 321 of these claims to the Department of Human Resources Development, which upheld the Company's position in 187 instances. Twenty-seven rulings adverse to the Company were appealed to a Referee of the Unemployment Insurance Appeals Board, resulting in a reversal of the Department's determination in eight cases; a decision favorable to the claimant was rendered in 3 cases (fifteen were withdrawn as the claimants found employment and one is pending). I believe these figures support the Company's position that employer protests and appeals are taken in good faith, and are not designed to withhold benefits from deserving employees.

5. The possible impact upon the Company, if the decision of the District Court invalidating Section 1335 of the Code is upheld, could be substantial:

(a) If the disbursements from the Fund exceed the total revenues in a twelve-month period, and the Company is accordingly required to pay taxes based upon the first $4,100 of wages rather than the first $3,800 of wages under Section 930 of the Code, the amount of additional taxes payable on wages earned in a year like 1969 would be $6,705 or 3.0%;

(b) Increased disbursements from the Fund could also place the Company under the higher tax schedule in Section 977, rather than the low schedule in Section 978. If the Company were required to pay under the high tax schedule, which would occur if the year-end balance in the Fund amounts to less than 5% of the wages in employment, in a year like 1969 the Company would be required to pay at the increased rate of

2.1%, including the 1.0% balancing account tax rate. Based on 1969 payrolls, payments at this rate would have increased the Company's taxes by $69,836 or 31.0%. If the high taxable wage base and the high tax schedule had been operative in 1969, total unemployment taxes, including the 1.0% balancing account tax, would have increased by $78,836, or 35.2%.

6. The Company believes the foregoing figures demonstrate that it has a significant economic interest in the pending litigation. The disposition of the action, in the absence of the Company's joinder as a party defendant, would leave the Company's interest unprotected; that interest differs from that of the State of California and its agents to the extent that the Company's interest may not be adequately represented by those parties.

/s/ ROBERT W. CONDON
Robert W. Condon

Subscribed and sworn to before me, this 5th day of July, 1970.

Frank R. Lutz, Notary Public in and for said State and County.

[Seal]

EXHIBIT H.

Affidavit of Willard Z. Carr, Jr. in Support of Motion of the Applicants for Leave to Intervene.

State of California, County of Los Angeles—ss.

Willard Z. Carr, Jr., being first duly sworn, deposes and says:

I am an attorney for the applicants for intervention, Southern California Edison Co., California Metal Enameling Co., Transit Mixed Concrete Co., American Cement Corp., West Coast Chain Manufacturing Co., and Occidental Life Insurance Co., and have been designated as such since May 5, 1970. This affidavit is submitted in support of the motion of the applicants for leave to intervene as defendants and to demonstrate to the Court that because leave to intervene could not be sought in the District Court, under the circumstances of this case the applicants' motion at this stage of the proceedings is timely.

1. I first learned of the existence of the instant litigation late in the Fall of 1969, shortly before the defendants filed a motion to dismiss the complaint for failure to join indispensable parties on December 5, 1969. During this period I was furnished copies of the pleadings then on file by the Office of the Attorney General of the State of California.

2. I relayed the information I had received to David G. Soash, Executive Vice-President of the Merchants and Manufacturers Association, and Mrs. Geraldine M. Beideman, Research Director of the California Employers Research Council, for whom I have acted as counsel in connection with other unemployment insurance matters, in accordance with continuing requests

from those organizations to apprise them of the existence of litigation in which the employer community might be concerned.

3. Shortly thereafter, I was requested to undertake a study of the case in order to determine its significance, and to advise Mr. Soash and Mrs. Beideman of my conclusions.

4. After preparing a summary of conclusions with the aid of an associate in my law firm, the information and recommendations contained therein were forwarded to Mrs. Beideman and Mr. Soash. I was informed that Mr. Soash would discuss our recommendations with interested employers.

5. During the Spring if 1970, the defendants' motion to dismiss was under submission by the District Court. In a similar case filed in the Northern District of California, *Romero v. Wirtz* (N.D. Cal. 1969), Civil No. 50213, the Three-Judge Court dismissed the action for failure to join employers, with leave to amend. Two of the three judges who heard *Romero* were on the panel in the instant case. In light of that action, we informed Mr. Soash that upon receiving word of a favorable ruling by the Court on the motion to dismiss in the instant case and upon receiving authority to proceed, we would take the necessary steps to have interested employers joined as defendants.

6. By letter dated May 5, 1970, Mr. Soash authorized us to act on behalf of Southern California Edison Co., California Metal Enameling Co. and Transit Mixed Concrete Co. and to seek their joinder as defendants. Since the Court had not ruled on the defendants' motion to dismiss, it was decided to seek joinder through a formal motion to intervene.

7. In order that the employers' interests in the litigation could be demonstrated to the Court in support of a motion to intervene, we began gathering factual information from the employers, the Department of Human Resources Development, and the California Employers Research Council. Although the necessary legal documents for the motion had been prepared, the factual information gathered with respect to the three original employers was not received until after the District Court entered its preliminary injunction on May 14, 1970.

8. The information concerning the three original employers, as well as that of the three employers who subsequently requested that they be joined as defendants, was still being collected when notice of appeal was filed in this cause.

The foregoing facts establish that neither the Applicants nor their counsel have been dilatory in their efforts to secure joinder of the employers as defendants in this litigation. It is submitted that the motion to intervene at the appellate level would not have been necessary if the District Court had ruled on the defendants' motion and dismissed the action with leave to amend. Had that action been taken, as it was in *Romero, supra,* the Applicants would have had an opportunity to be heard in the District Court prior to that Court's ruling on the motion for preliminary injunction. Even if the motion to dismiss had been denied, the Applicants could have taken the necessary steps prior to the decree granting the injunction to seek intervention. Since no action was taken on the motion to dismiss, and the preliminary injunction was granted, the Applicants' only recourse is to seek to intervene before this Court.

I declare that the foregoing information is true and correct to the best of my knowledge and belief.

/s/ Willard Z. Carr, Jr.
Willard Z. Carr, Jr.

Subscribed and sworn to before me, this 23rd day of October, 1970.

Barbara W. Deadrick,
Notary Public

My Commission Expires May 9, 1973.

[Seal]

EXHIBIT I.

Order Granting Motion to Dismiss.

In the United States District Court for the Northern District of California.

Ramon Romero, et al., Plaintiffs, vs. Willard Wirtz, etc.; et al., Defendants.

BEFORE: OLIVER D. HAMLIN, U. S. CIRCUIT JUDGE, ALFONSO J. ZIRPOLI and ALBERT C. WOLLENBERG, U. S. DISTRICT JUDGES.

Plaintiffs have filed this action for damages, declaratory and equitable relief, alleging that the California and federal statutes which exclude agricultural labor from their definitions of "employment" for the purposes of unemployment compensation violate the due process and equal protections clauses of the Constitution of the United States.

It is apparent that, assuming hearings are held on this question, any relief granted may well affect the interests of the agricultural employers presently exempted from the unemployment compensation schemes here under challenge. These employers are not named in this action. We therefore dismiss the action with leave to amend the complaint accordingly. Plaintiff is granted thirty (30) days to amend complaint.

Dated: October 17, 1969.

/s/Oliver D. Hamlin
United States Circuit Judge

/s/ Albert C. Wollenberg
United States District Judge

/s/ Alfonso J. Zirpoli
United States District Judge